

## SENATE BILL NO. 371

INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE DEFINITION OF "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT TO INCLUDE FACILITIES THAT EMIT CERTAIN LEVELS OF SULFUR DIOXIDE AND NITROGEN OXIDE; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 75-20-104, MCA, is amended to read:

**"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d), including upgrading to a design capacity covered by subsection (8)(c), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; ~~or~~

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

(vi) emitting greater than 400 tons of sulfur dioxide per year or any addition thereto; or

(vii) emitting greater than 1,000 tons of nitrogen oxide per year or any addition thereto;

(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in subsection (8)(a):

(i) emitting 300 tons a year of particulate matter at 10 microns or less;

(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title

- 1 75, chapter 2;
- 2 (iii) directly affecting:
- 3 (A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;
- 4 (B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;
- 5 (C) habitat used by a threatened or endangered species of plant or animal as designated pursuant
- 6 to 16 U.S.C. 1531, et seq.; or
- 7 (D) one of the following exclusion areas:
- 8 (I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;
- 9 (II) national primitive areas;
- 10 (III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;
- 11 (IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271,
- 12 et seq.; or
- 13 (V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or
- 14 (iv) that would require a permanent workforce greater than 300 workers;
- 15 (c) each electric transmission line and associated facilities of a design capacity of more than 69
- 16 kilovolts, except that the term:
- 17 (i) does not include an electric transmission line and associated facilities of a design capacity of
- 18 230 kilovolts or less and 10 miles or less in length; and
- 19 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts
- 20 but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way
- 21 agreements or options for a right-of-way from more than 75% of the owners who collectively own more
- 22 than 75% of the property along the centerline;
- 23 (d) except pipelines within the boundaries of the state that are used exclusively for the irrigation
- 24 of agricultural crops, each pipeline, whether partially or wholly within the state, greater than 17 inches in
- 25 inside diameter and 30 miles in length, and associated facilities;
- 26 (e) any use of geothermal resources, including the use of underground space in existence or to
- 27 be created, for the creation, use, or conversion of energy, designed for or capable of producing
- 28 geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except
- 29 pollution control facilities approved by the department and added to an existing plant;
- 30 (f) any underground in situ gasification of coal; or

(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

**NEW SECTION.** **Section 2. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**NEW SECTION.** **Section 3. Effective date.** [This act] is effective on passage and approval.

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